

1 AN ACT concerning revenue.

2 WHEREAS, A wind energy Act that provides for a restoration
3 indemnity fund, and mechanic's lien clarification will provide
4 a favorable environmental and economic climate for development
5 of wind energy; and

6 WHEREAS, It is desirable to develop both renewable and
7 alternative energy resources to obtain environmental quality
8 and public health benefit; and

9 WHEREAS, The benefits of electricity from renewable and
10 alternative energy resources accrue to the public at large,
11 thus consumers and electric utilities and alternative retail
12 electric suppliers share an interest in developing and using a
13 significant level of these environmentally preferable
14 resources in the State's electricity supply portfolio and
15 stability of taxes for extended periods of time; and

16 WHEREAS, Encouraging energy efficiency will improve the
17 environmental quality and public health in the State of
18 Illinois; and

19 WHEREAS, Wind energy is one alternative energy source that
20 can be used to provide electricity to utility consumers; and

21 WHEREAS, Some regions in the State are ideal locations for
22 wind energy system development; and

23 WHEREAS, As the facilities are typically constructed on
24 property owned by others, it is desirable to create an
25 indemnity fund to pay for deconstruction in the event that the
26 wind energy company fails to do so in a timely manner; and

1 WHEREAS, It is appropriate to protect the owners of the
2 underlying lands from mechanic's liens imposed on those lands
3 in the event the entities constructing the wind energy
4 facilities fail to pay suppliers of labor and materials;
5 therefore, be it

6
7 **Be it enacted by the People of the State of Illinois,**
8 **represented in the General Assembly:**

9 Section 1. Short title. This Act may be cited as the Wind
10 Energy Indemnity Fund Act.

11 Section 5. Definitions. As used in this Act:

12 "Abandonment" means (a) in the case of a landowner: (i)
13 failure by the wind energy company to operate a wind turbine or
14 wind turbines for the purpose for which they were designed and
15 installed, for a period of 12 consecutive months, and (ii)
16 failure to pay the landowner moneys owed to him or her in
17 accordance with the underlying agreement, for a period of 6
18 consecutive months; (b) in the case of a county board: (i)
19 failure by the wind energy company to operate a wind turbine or
20 wind turbines for the purposes for which they were designed and
21 installed, for a period of 12 consecutive months, and (ii)
22 failure to adhere to any or all of the restrictions and
23 conditions that were part of the approval process of the

1 appropriate county authority for the granting of the special
2 use permit, conditional use permit, zoning change, or zoning or
3 permitting ordinance of any kind given in order to allow the
4 installation and operation of the wind turbine or wind
5 turbines.

6 "Board" means the governing body of the Wind Energy
7 Indemnity Fund Corporation.

8 "Claimant" means either a landowner or a county board
9 seeking to have a deconstruction paid for from the Fund and
10 carried out by the Department.

11 "Corporation" means the Wind Energy Indemnity Fund
12 Corporation, as established in this Act.

13 "County board" has the meaning set forth in Section 1.07 of
14 the Statute on Statutes.

15 "Deconstruction" means removal of all property comprising
16 a wind energy generation facility from the property of a
17 landowner and restoration of the property to the condition in
18 which it existed immediately prior to the construction of the
19 facility, including, but not limited to, soil type and
20 topography; provided, however, that foundations, pads,
21 electrical lines, and any other underground facilities must be
22 removed to a depth of 4 feet below the surface of the ground.

23 "Department" means the Department of Commerce and Economic
24 Opportunity.

25 "Director", unless otherwise provided, means the Director
26 of Commerce and Economic Opportunity, or the Director's

1 designee.

2 "Fund" means the Wind Energy Indemnity Fund.

3 "Landowner" means any person with an ownership interest in
4 property subject to an underlying agreement.

5 "Person" means any individual or entity, including, but not
6 limited to, a sole proprietorship, a partnership, a
7 corporation, a cooperative, an association, a limited
8 liability company, an estate, a trust, or a governmental
9 agency.

10 "Underlying agreement" means a written arrangement with a
11 landowner, including, but not limited to, an easement, under
12 the terms of which a person constructs or intends to construct
13 a wind energy generation facility on the property of the
14 landowner.

15 "Wind energy generation facility" means all property of any
16 nature whatsoever comprising an operation designed to harness
17 wind energy and create electricity therefrom, including, but
18 not limited to, turbines, towers, roadways, concrete
19 foundations, transmission lines, and poles, all situated on,
20 under, or over the property of a landowner.

21 "Wind energy indemnity trust account" means a trust account
22 established by the Director that is used for the receipt and
23 disbursement of moneys paid from the Fund.

24 "Wind turbine" means each tower, blade, and propeller
25 housing designed for wind energy generation.

1 Section 10. Powers and duties of the Director. The Director
2 has all powers necessary and proper to fully and effectively
3 execute the provisions of this Act and has the general duty to
4 implement this Act. The Director's powers and duties include,
5 but are not limited to, the following:

6 1. The Director shall personally serve as president of
7 the Corporation.

8 2. The Director may take any action that may be
9 reasonable or appropriate to enforce this Act and its
10 rules.

11 Section 15. Administrative procedure. The Illinois
12 Administrative Procedure Act applies to this Act.

13 Section 20. Administrative review and venue. Final
14 administrative decisions of the Department are subject to
15 judicial review under Article III of the Code of Civil
16 Procedure and its rules. The term "administrative decision" is
17 defined as in Section 3-101 of the Code of Civil Procedure. An
18 action to review a final administrative decision under this Act
19 may be commenced in the circuit court of any county in which
20 any part of the transaction occurred that gave rise to the
21 claim that was the subject of the proceedings before the
22 Department.

23 Section 25. Rules. The Department may promulgate rules that

1 are necessary for the implementation and administration of this
2 Act.

3 Section 30. Fund assessments. There is an assessment of
4 \$10,000 for each wind turbine constructed or under construction
5 as of the effective date of this Act and for each turbine
6 constructed thereafter, under the provisions of an underlying
7 agreement. The assessment is an obligation of the owner of each
8 wind turbine and is payable in equal annual installments of
9 \$1,000 over a period of 10 years; provided, however, that the
10 subsequent annual installments must be adjusted based on
11 inflation, as reflected in the Consumer Price Index, on an
12 annual basis. The initial payment is payable within 90 days
13 after the effective date of this Act for wind turbines already
14 constructed or under construction, and, in all other cases,
15 prior to the commencement of construction.

16 All installments under this Section must be sent to the
17 Department and made payable to the Corporation.

18 It is the responsibility of all parties to an underlying
19 agreement to report the existence and specific provisions of
20 the underlying agreement to the Department.

21 The Department shall mail all assessment notices to owners
22 of wind energy generation facilities at least 30 days before
23 the assessment installment is due.

24 All wind turbines already constructed, under construction,
25 or issued a building permit before the effective date of this

1 Act are to provide proof to the county of payment to the Fund
2 within 95 days of the effective date of this Act. If such proof
3 of payment is not provided, then the county must order the wind
4 energy company to stop all operation and construction
5 activities until the county receives proof of payment to the
6 Fund. For all other wind turbines, no county may issue a
7 building permit without being provided proof that the above
8 assessment has been paid to the Fund.

9 Section 35. Abandonment. Upon an administrative finding in
10 a hearing held by the Department that a deconstruction has been
11 validly determined and ordered by either a court of competent
12 jurisdiction or an arbitrator in binding arbitration, and
13 deconstruction, after a period of at least 8 months, has not
14 been completed satisfactorily, the Director has all the powers
15 for the benefit of claimants as established under this Act,
16 including, but not limited to, the power to do the following:

17 1. request the transfer of moneys from the Fund to the
18 Trust Account for the purpose of paying the cost of
19 deconstruction in accordance with this Act;

20 2. disburse the funds in the Trust Account for the
21 deconstruction in accordance with this Act;

22 3. cause the sale of the deconstructed assets;

23 4. retain from the sale of the deconstructed assets
24 moneys adequate to cover the costs to the Department of the
25 deconstruction, and pay those amounts to the Fund;

1 5. return all moneys over and above the costs to the
2 Department for the deconstruction to the owner or owners of
3 the deconstructed assets, or to the holders of valid liens
4 on those assets.

5 Section 40. Statutory lien. The Department has a lien prior
6 and paramount to all other liens of any sort on the assets of
7 the wind energy system to the extent of the costs incurred by
8 the Department to accomplish the deconstruction of the
9 abandoned wind energy system, which arises and attach upon
10 construction of said wind energy system; provided, however,
11 that the lien herein granted to the Department is not prior and
12 paramount to the statutory lien in favor of real property
13 taxes.

14 Section 45. Claims.

15 (a) A claimant shall file a complaint, on forms supplied by
16 the Department, that contains at least the following:

17 (1) the name and address of the claimant;

18 (2) the name and address of the owner of the wind
19 energy generation facility in question;

20 (3) the location of the wind energy generation facility
21 in question;

22 (4) a copy of either a court decision, or the finding
23 of an arbitrator in a binding arbitration proceeding, that
24 indicates a finding of abandonment of the wind energy

1 generation facility in question; a determination that the
2 underlying agreement is null, void, and of no further force
3 and effect; and an order for deconstruction of same. The
4 court order or arbitration decision must have been rendered
5 at least 8 months previously, and the time for all appeals
6 and related proceedings must have lapsed.

7 (5) evidence showing that the deconstruction ordered
8 by a court, or by an arbitrator in a proceeding for binding
9 arbitration, has not been carried to a satisfactory
10 conclusion, as defined in this Act; and

11 (6) a request that the funds necessary to perform the
12 deconstruction be paid to the Department from the Fund and
13 that the Department carry out the deconstruction in
14 accordance with the order of the court or the arbitrator
15 and in accordance with the definition of deconstruction as
16 contained in this Act.

17 (b) A hearing shall be held by the Department and a
18 decision rendered as to the validity of the claimant's
19 complaint. In the event of a finding that the complaint is
20 valid, then, within 90 days after the date, the Department
21 shall obtain at least 2 bids from contractors to carry out the
22 specific deconstruction. One bidder must be chosen by the
23 Department within the following 60 days, and the Department,
24 within 60 days thereafter, shall enter into a written agreement
25 with the successful bidder for the deconstruction, which must
26 be accomplished within 6 months thereafter.

1 (c) It is the responsibility of the Department to monitor
2 the progress of the deconstruction and provide the necessary
3 supervisory oversight to ensure that it is accomplished in
4 accordance with the deconstruction agreement and the
5 provisions of this Act.

6 Section 50. Illinois Wind Energy Indemnity Fund
7 Corporation; creation; powers.

8 (a) There is hereby created the Illinois Wind Energy
9 Indemnity Fund Corporation, a political subdivision, body
10 politic, and public corporation. The governing powers of the
11 Corporation are vested in the Board of Directors composed of
12 the Director, who shall personally serve as President; the
13 Attorney General or his or her designee, who shall serve as
14 Secretary; the State Treasurer or his or her designee, who
15 shall serve as Treasurer; and the Chairman of the Illinois
16 Commerce Commission, or his or her designee. Three members of
17 the Board constitute a quorum at any meeting of the Board, and
18 the affirmative vote of 3 members is necessary for any action
19 taken by the Board at a meeting, except that a lesser number
20 may adjourn a meeting from time to time. A vacancy in the
21 membership of the Board does not impair the right of a quorum
22 to exercise all the rights and perform all the duties of the
23 Board and Corporation.

24 (b) The Corporation has the following powers, together with
25 all powers incidental or necessary to the discharge of those

1 powers in corporate form:

2 (1) To have perpetual succession by its corporate name
3 as a corporate body.

4 (2) To adopt, alter, and repeal bylaws, not
5 inconsistent with the provisions of this Act, for the
6 regulation and conduct of its affairs and business.

7 (3) To adopt and make use of a corporate seal and to
8 alter the seal at pleasure.

9 (4) To avail itself of the use of information,
10 services, facilities, and employees of the State of
11 Illinois in carrying out the provisions of this Act.

12 (5) To receive funds assessed by the Department under
13 this Act.

14 (6) To administer the Fund by investing funds of the
15 Corporation that the Board may determine are not presently
16 needed for its corporate purposes.

17 (7) Upon the request of the Director, to make payment
18 from the Fund to the Trust Account when payment is
19 necessary to pay costs of deconstruction in accordance with
20 the provisions of this Act.

21 (8) To authorize, receive, and disburse funds by
22 electronic means.

23 (9) To have those powers that are necessary or
24 appropriate for the exercise of the powers specifically
25 conferred upon the Corporation and all incidental powers
26 that are customary in corporations.

1 (c) All assessments by the Department must be held by the
2 Corporation in the Fund.

3 (d) Subject to applicable law, the assets of the Fund may
4 be invested and reinvested at the discretion of the
5 Corporation, and the income from these investments must be
6 deposited into the Fund and must be available for the same
7 purposes as all other assets of the Fund.

8 (e) The assets of the Fund may not be available for any
9 purposes other than the payment of deconstruction costs under
10 this Act and the payment of refunds of amounts that the Board
11 determines have been inappropriately paid into the Fund, and
12 may not be transferred to any other fund, other than the Trust
13 Account when necessary to pay deconstruction costs under this
14 Act or to pay refunds authorized by the Board.

15 Section 55. No waiver. The provisions of this Act,
16 including the definitions, may not be altered, varied, or
17 revised by agreement.

18 Section 900. The Property Tax Code is amended by adding
19 Division 5 to Article 11 as follows:

20 (35 ILCS 200/Art. 11 Div. 5 heading new)

21 DIVISION 5. WIND ENERGY PRODUCTION

22 (35 ILCS 200/11-185 new)

1 Sec. 11-185. Definitions. For purposes of this Division 5:

2 "Wind energy conversion device" means any device
3 including, but not limited to, a wind charger, windmill, or
4 wind turbine that converts wind energy to a form of usable
5 energy.

6 "Wind Energy Conversion Parcel" means all property rights
7 obtained by the Wind Energy System owner to the platted parcel
8 including the wind energy conversion devices, associated
9 equipment, easements, contracts, and leases.

10 "Wind energy conversion system" is all wind energy
11 conversion devices owned by a person who has executed a lease,
12 contract, or other written agreement or who has purchased or
13 acquired property so that one or more wind energy conversion
14 devices can be erected, built, or otherwise installed on that
15 property. These devices do not need to be on contiguous parcels
16 of property to be considered a part of a total wind energy
17 conversion system.

18 (35 ILCS 200/11-190 new)

19 Sec. 11-190. Applicability. The provisions of this
20 Division 5 do not apply to wind energy conversion systems that
21 are owned by a person strictly for personal use or to any
22 person that is otherwise exempt from taxation under the
23 Property Tax Code. For the purposes of this Section, "personal
24 use" means the use of any wind energy conversion system with a
25 nameplate capacity of less than 2 megawatts.

1 (35 ILCS 200/11-195 new)

2 Sec. 11-195. Platting requirements. Upon the completion of
3 construction, the owner of a wind energy conversion system, at
4 his or her own expense, shall cause the wind turbine facilities
5 to be platted by an Illinois registered land surveyor. The plat
6 must include access routes, together with a metes and bounds
7 description of the area surrounding each wind turbine. The
8 system owner must record the plat and deliver a copy of it to
9 the property owner and to the chief county assessment officer
10 within 60 days after the completion of the construction. Upon
11 receiving a copy of the plat, the chief county assessment
12 officer must issue a separate parcel identification number, or
13 numbers for the wind energy conversion system to apportion the
14 value to each taxing district in which the system is physically
15 located.

16 (35 ILCS 200/11-200 new)

17 Sec. 11-200. Limitation of liability for landowner. No
18 landowner shall be liable for Wind Energy Conversion Parcel
19 taxes except through ownership of the wind energy system.

20 (35 ILCS 200/11-203 new)

21 Sec. 11-203. Recourse against Wind Energy Conversion
22 Parcels. If the Wind Energy Conversion Parcel real estate taxes
23 are not paid, the county may proceed against the wind energy

1 conversion parcels with collection as provided Article 20 of
2 this Code.

3 (35 ILCS 200/11-205 new)

4 Sec. 11-205. Wind energy conversion system size and
5 capacity. The Department must determine the total size of the
6 device. Unless the systems are interconnected with different
7 distribution systems, the nameplate capacity of one wind energy
8 conversion device must be combined with the nameplate capacity
9 of any other wind energy conversion device that is under common
10 ownership. In case of a dispute, the Department must draw all
11 reasonable inferences in favor of combining the devices into
12 one system. In making a determination, the Department may
13 decide that 2 wind energy conversion devices or systems are
14 under common ownership when the underlying ownership structure
15 contains similar persons or entities, even if the ownership
16 shares differ. Wind energy conversion devices or systems are
17 not under common ownership solely because the same person or
18 entity provided equity financing for the systems.

19 (35 ILCS 200/11-207 new)

20 Sec. 11-207. Method of valuation for wind energy conversion
21 systems.

22 (a) It is the policy of this State that, beginning on and
23 after January 1, 2007, a wind energy conversion system that is
24 used as an electric power source must be valued on cost

1 allocated on real property supplemented by the sales comparison
2 approach to the extent relevant and sufficient data are
3 available. If, however, a wind energy conversion system ceases
4 to operate for any reason, the minimum assessed value of the
5 system is 10% of the cost of replacing the system with a new
6 wind energy conversion system.

7 (b) The 2007 base certified value per megawatt capacity
8 shall be \$300,000.

9 (c) The Department shall develop regulations for
10 depreciation factoring functional obsolescence.

11 (35 ILCS 200/11-210 new)

12 Sec. 11-210. Valuation during 5-year valuation period. In
13 furtherance of the policy of encouraging renewable and
14 alternative energy resources to obtain environmental quality
15 and public health benefit, the valuation shall not exceed the
16 base year valuation for a period of 5 years.

17 (35 ILCS 200/11-215 new)

18 Sec. 11-215. Assessments of wind energy conversion
19 systems.

20 (a) A wind energy conversion system must be assessed at 33
21 1/3% of the valuation. The chief county assessment officer
22 shall apportion the value to each wind energy conversion parcel
23 in which the wind energy system is physically located.

24 (b) A wind energy conversion system is not subject to

1 equalization by the Department, the county, or the board of
2 review.

3 Section 905. The Mechanics Lien Act is amended by adding
4 Section 1.01 as follows:

5 (770 ILCS 60/1.01 new)

6 Sec. 1.01. Definitions; platting requirements for wind
7 energy systems; extent of lien on wind energy parcel.

8 (a) Definitions.

9 "Wind energy conversion device" means any device
10 including, but not limited to, a wind charger, windmill, or
11 wind turbine that converts wind energy to a form of usable
12 energy.

13 "Wind energy conversion parcel" means all property rights
14 obtained by the wind energy system owner to a platted parcel
15 including the wind energy conversion devices, associated
16 equipment, easements, contracts, and leases.

17 (b) Upon the completion of construction, the owner of a
18 wind energy conversion system, at his or her own expense, shall
19 cause the wind turbine facilities to be platted by an Illinois
20 registered land surveyor. The plat must include access routes,
21 together with a metes and bounds description of the area
22 surrounding each wind turbine. The system owner must record the
23 plat and deliver a copy of it to the property owner and to the
24 chief county assessment officer within 60 days after the

1 completion of the construction. Upon receiving a copy of the
2 plat, the chief county assessment officer must issue a separate
3 parcel identification number, or numbers, for the wind energy
4 conversion system to apportion the value to each taxing
5 district in which the system is physically located.

6 (c) A lien for work or materials on wind energy conversion
7 parcels is limited to the platted parcel, including all
8 property rights obtained by the wind energy system owner to the
9 platted parcel including the wind energy conversion devices,
10 associated equipment, easements, contracts, and leases.

11 Section 999. Effective date. This Act takes effect upon
12 becoming law.